

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 03-172
Competition in the Market for the)
Delivery of Video Programming)

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (“CEA”)¹ hereby submits Reply Comments on the Notice of Inquiry (“NOI”) in the above-captioned proceeding.² The Commission solicits data and information in this proceeding on the status of competition in the market for the delivery of video programming for its annual report to Congress.³ In its Comments, CEA was pleased to respond to the Commission’s request for information related to video equipment and the video marketplace.

¹ The Consumer Electronics Association is the principal U.S. trade association of the consumer electronics and information technologies industries, including manufacturers of the television receivers, monitors, and associated electronics such as set-top boxes, personal digital recorders (PVRs) and video cassette recorders (VCRs) that bring the video marketplace to consumers. Its members design, manufacture, distribute and sell a wide range of consumer products, including digital and analog television receivers and monitors, video cassette recorders, direct broadcast satellite radio (DARS) and television (DBS) equipment, broadcast AM and FM radios, and many similar devices. Our members also design and manufacture unlicensed devices such as Wi-Fi network devices that connect personal computers, PDAs and laptops to peripheral devices and networks, cordless phones, baby monitors, and wireless headsets. CEA’s more than 1,200 companies include all of this country’s major consumer electronics manufacturers.

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*, 18 FCC Rcd 16042 (“2003”) (“NOI”).

³ This report is statutorily required, *see* 47 U.S.C. § 548(g).

In these Reply Comments, CEA addresses an issue raised by the Commission in its NOI concerning the availability of competitively-supplied customer premises equipment used to provide video programming and interactive devices and services.⁴ Specifically, we address consumer access to navigation devices⁵ such as cable set-top boxes, which continues to be exclusively through the serving cable operator. The Commission is considering these issues in CS Docket No. 97-80,⁶ so we address the lack of competitive supply of set-top boxes and other navigation devices relatively briefly for the purpose of responding to the issue in the context of the Commission's NOI in this proceeding.

CEA is heartened by the Commission's recent adoption of the unidirectional "Plug & Play" Report and Order. These rules will be a large step toward fulfilling the mandate of Section 629 of the Communications Act to require the competitive availability of set-top boxes and similar navigation devices – still unfulfilled so many years after its enactment in 1996.⁷ Equally important, we continue to work to conclude an agreement addressing bi-directional services. Timely implementation of a "Phase II" agreement for bi-directional services, as envisaged by the "Plug & Play" agreement, is necessary for the competitive supply of interactive digital cable-ready products that are fully interoperable with cable systems around the country.

⁴ See NOI at ¶¶ 23, 24, 30.

⁵ "Navigation devices" are "converter boxes, interactive equipment, and other equipment used by consumers within their premises to receive multichannel video programming and other services," see 47 C.F.R. § 76.1201(c).

⁶ Industry is submitting to the Commission periodic reports on the status of negotiations on the specifications for bi-directional digital cable receivers in CS Docket No. 97-80, and comments will be accepted in February 2004, on issues related to maintaining the July 1, 2006 deadline for ending cable provision of navigation devices that perform both security and other functions within a single integrated device. See *Implementation of Section 304 of Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 7924 (2003).

⁷ See Section 629 of the Communications Act of 1934, as amended, codified at 47 U.S.C. § 549.

Successful provision of competitively-supplied devices will greatly benefit consumers, but the success of competitive provision relies on the competitively-supplied devices being able to deliver the services and features made available by the service providers equally as well as devices supplied by the service providers themselves. As the Consumer Electronics Retailers Coalition (“CERC”) notes in its Comments, complete comparability can occur only when devices sold or leased by the service provider are based exclusively on the basic specifications for attaching to cable systems, and those specifications are available for all manufacturers to implement.⁸

CEA believes that it is in the interest of both competitive suppliers and cable service providers that there exist a completely level playing field with all manufacturers having the same basic hardware and software attachment specifications on which to build. After that, the competitive marketplace will work to provide both price competition and the introduction of differentiating factors that inexorably lead to lower prices and better equipment for consumers.

While some factors may be constrained by MSO legacy system considerations, this is not the case with respect to the requirement that devices distributed by cable operators rely on CableCARDS™ on a going-forward basis. This requirement is now set to go into effect on July 1, 2006, and must not be postponed further. The CableCARD™ performs the role of controlling and securing a subscriber’s conditional access to the tiers of digital service for which he or she is authorized, and it is an absolutely necessary element for the provision of devices on a fully level playing field. Cable operators themselves must rely on the CableCARDS™ and the CableCARD™ function if competitively-acquired equipment is to be fully supported by cable

⁸ See Comments of the Consumer Electronics Retailers Coalition at 4.

operators on the same basis as their own equipment. Moreover, it would be damaging to competition were cable operators able to charge an inflated price for the CableCARDS™ necessary to use competitively-acquired equipment.

CEA agrees with CERC⁹ that it would be unwise and anticompetitive, and not in accord with precedent, for consumers to be levied an additional device charge for the only means available to exercise their “right to attach” set forth in the Commission’s regulations. Cable operators should be allowed to recover their CableCARD™ costs only as part of providing their service, in a manner analogous to the recovery of the cost of network filters used for subscribers’ conditional access to tiers of analog cable service.

CEA also agrees with CERC that a level playing field for competitive devices *must* include an equitable distribution of subsidies for device pooling. There is no rationale or basis in law or regulation for permitting the distribution of such subsidies only to consumers who obtain their devices from cable operators rather than from a retailer. To permit such subsidies only to be acquired for the cable-provided device clearly is anti-competitive and would seriously skew the marketplace against the competitive supply of the devices

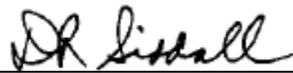
Conclusion

CEA emphasizes that, having approved the Plug & Play compatibility rules for competitive unidirectional digital cable ready products, the Commission must continue further in order to fully provide a level playing field for the provision of competitive set-top cable boxes as directed by the Congress in 1996. Allowing the continued provision by cable providers of navigation devices with integrated security after the already-extended July 1, 2006, date would

⁹ *Id.*

only delay once more the beginning of full competition in this marketplace. For similar reasons, the Commission must ensure that the competitive supply of navigation devices *not* be undermined by permitting subsidization only to customers who obtain the device from their service provider.

Respectfully Submitted,



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